

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0490 MVE  
Motor Vehicle Excise Tax  
For Tax Years: 1993-1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Motor Vehicle Excise Tax - Imposition**

**Authority:** IC 6-6-5-6; IC 9-13-2-78(2); IC 9-18-2-1(C)

Taxpayer protests the imposition of the motor vehicle excise tax.

**STATEMENT OF FACTS**

In 1993, the taxpayer purchased the 1993 Cadillac at issue in this motor vehicle excise tax protest. The taxpayer's wife filed for divorce on October 5, 1994. Provisional orders were entered on November 15, 1994, at which point the wife (hereinafter "A") was granted exclusive provisional use of the Cadillac. The vehicle was titled in the taxpayer's name but the agreement did not express an obligation for the taxpayer to continue paying the taxes on the vehicle or to provide license plates.

A final decree of divorce was entered on February 5, 1997. Pursuant to the dissolution decree, A was granted the Cadillac and the taxpayer was obligated to pay the outstanding balance on the car note. In October of 1997, the taxpayer received a copy a letter from the Vehicles Titles Division of the Illinois Secretary of State's office to the bank that held the note on the Cadillac. The letter indicated that there had been an application submitted for an Illinois license and certificate of title. Upon investigation, it became apparent to the taxpayer that on September 8, 1995, A (who had provisional use of the car) went to a currency exchange located in Illinois and applied for a license and certificate of title for the 1993 Cadillac. An Illinois title was issued in the taxpayer's name on or around November 14, 1995. The title indicated that the taxpayer lived at a specific address in Illinois, in fact, the house at this Illinois address was the home of A's sister. The taxpayer had never lived at this address.

The taxpayer believed that A was attempting to avoid paying the Indiana Motor Vehicle Excise Tax on the automobile, so he filed a police report on or about March 5, 1996. The Indiana authorities believed that Indiana did not have jurisdiction and the State of Illinois did not wish to pursue the matter.

## **I. Motor Vehicle Excise Tax - Imposition**

### **DISCUSSION**

The taxpayer protests the imposition of motor vehicle excise tax on the 1993 Cadillac. The taxpayer does not dispute that the vehicle was titled and registered to him during the period in question or that he was an Indiana resident for the period.

The motor vehicle excise tax is imposed on vehicles that are required to be registered in Indiana. The imposition of the motor vehicle excise tax is provided at IC 6-6-5-2(a), which provides the following:

There is imposed an annual license excise tax upon vehicles, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes, but in addition to any registration fees imposed on such vehicles.

The term "vehicle" is defined under IC 6-6-5-1 which provides the following:

As used in this chapter, 'vehicle' means a vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state.

The taxpayer contends that the Department may not impose the Motor Vehicle Excise Tax because the provisional order and later dissolution decree granted exclusive use to A during the period at issue. However, the vehicle was purchased by the taxpayer and the certificate of title is listed still in his name. Indiana Code 9-13-2-121 provides in pertinent part:

(a) "Owner" means, except as otherwise provided in this section, when used in reference to a motor vehicle:

(1) a person who holds *legal* title of a motor vehicle, ...

(Emphasis added)

The taxpayer cites a few cases in support of his argument he was not required to pay the motor vehicle

excise tax. The taxpayer further cites Pekin Insurance Company v. Charlie Roe Chevrolet, Inc., 556 N.E.2d 1367 (Ind.App. 1990), in which the court states, “certificate of title is not, of itself, proof of ownership or legal title to the vehicle.” Citing Royal Indemnity Insurance Co. v. Shue 134 Ind.App. 322, 327, 182 N.E.2d 796, 799 (1962); Krietensten v. Robinson, 126 Ind.App. 83, 88, 129 N.E.2d 368, 370. See further, Maurer v. Indiana Department of State Revenue, 607 N.E.2d 985 (Ind.Tax 1993). The Pekin case involves a situation where an automobile dealer brought action against an insurer to determine who owned the automobile when it was stolen during a sales transaction. The above quote is best considered when examined in light of the fact that the judge was deferring to the application of the commercial sales code.

The taxpayer questions whether the certificate of title and the legal title are one and the same. While there is no case directly on point concerning the title of an automobile, there is a case examining the meaning of holding title to mortgages but not having possession or discretion as to how the mortgages were handled. The taxpayer contended that since it did not hold possession or control of the mortgages, it was not subject to the Intangibles Tax. The court noted in this case of Meridian Mortgage Company, Inc. v. Indiana Department of State Revenue, Intangibles Tax Division, 395 N.E.2d 433 at 439 (Ind Ct.App. 1979): “the three primary indicia of ownership of personal property are title; possession and control, which includes the right to sell, dispose of or transfer.” The taxpayer claims that Meridian situation is analogous to the case at hand, because once the provisional orders were entered, the taxpayer no longer had the possession or control, which includes the right of sale.

The Department notes that provisional orders are temporary and not a permanent divestment of rights, however, after looking at the facts they indicate an implicit agreement that with the provisional use of the car came the obligation to pay the excise tax on the vehicle. The facts indicate that A on September 8, 1995, went to a currency exchange located in Illinois and applied for a license and certificate of title for the 1993 Cadillac. An Illinois title was issued in the taxpayer’s name on or around November 14, 1995. (See Statement of Facts). From this action, it appears that she had knowledge that it was her duty to pay the excise tax. Upon the issuance of the provisional orders, possession and control were in her hands and not the taxpayer’s. Also upon dissolution, the vehicle remained in her possession free from any indebtedness. Under IC 9-13-2-13 it appears that A was the "owner" of the vehicle in question from the date of the signing of the provisional orders.

The taxpayer concedes that he owes the motor vehicle excise tax up until the date of the signing of the provisional orders.

### **FINDING**

The taxpayer's protest is partially sustained and partially denied. The taxpayer is denied in that he is liable for the motor vehicle excise tax up until the signing of the provisional orders on November 15, 1994, and sustained in that he does not owe the motor vehicle excise for the period beginning November 15, 1994.

### **II. Tax Administration – Penalty**

### **DISCUSSION**

Taxpayer protests the imposition of the ten percent (10%) negligence penalty. The negligence penalty imposed under I.C. 6-8.1-10-2.1 may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under I.C. 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

The taxpayer had reasonable cause under the circumstances to believe he was not liable for the motor vehicle excise tax.

### **FINDING**

The taxpayer's protest is sustained. The ten percent (10%) negligence penalty will be waived.